IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19 .12.2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN

WRIT Appeal No.135 of 2004

& W.P.No.39213 of 2003

1. S. Sharravvanan
2. S. Sasikala ..Appellants/petitioners in both W.A & W.P. (Petitioner in W.P.6870/96

Vs.

1. The State of Tamil Nadu
   rep.by its Secretary to Government
   Food and Consumer Protection Department
   Fort St.George
   Chennai-600 009.

2. The Registrar of Co-operative Societies
   Chennai-600 010.

3. The Joint Registrar/President-cum-
   Managing Director andConvenor
   P.M.T. District Central Co-operative
   Bank Limited
   Sivagangai. .. Respondents in both W.A.& W.P. (Respondents in do)

Writ appeal under clause 15 of the Letters patent against the order dated 30.10.2003 in W.P.No.6870 of 1996 under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records of the third respondent in R.C.No.4992/95/PA to MD dated 5.6.96 and quash the same and direct the respondents to communicate the acceptance of the tender in respect of writ Appeal No.935 /95 dated 21.11.1995 of the learned Single Judge.

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W.P.No.39213 of 2003 filed under Article 226 of the Constitution of India praying to issue of a writ of Certiorarified Mandamus calling for the records on the files of the second respondent pertaining to his order bearing No.Re.42335/93 ACS3 dated 14.11.2003 and quash the same and consequently direct the respondents to sell the vacant site and building of the erstwhile Ramanathapuram District Central Co-operative Bank bearing T.S.No.746 and 758/3 situated at No.41 and 42, Krishna Rao Tank Street, Madurai in favour of the petitioner at the rate of market value prevailing at the time of confirmation of sale in favour of the petitioner.

For Appellants/Petitioners : Mr.G.Rajagopalan,SC
Mr.M.S.Ramesh

For Respondent : Ms.D.Geetha, AGP
for RR1 & 2
Mr.Vijay Narayan, SC
for Mr.P.Srinivas for R3

J U D G E M E N T

K.K.SASIDHARAN, J

This writ appeal has been preferred by the petitioners in W.P.No.6870 of 1996 having aggrieved by the order of the learned Single Judge dated 30.10.2003 whereby the learned Judge though quashed the order dated 5.6.1996 of the third respondent based on the decision of the Government not to sell the property of the erstwhile Ramanathapuram District Central Co-operative Bank, rejected the prayer made by the petitioners to communicate the acceptance of the tender in their favour.

2. W.P.No.39213 of 2003 is preferred against the order dated 14.11.2003 on the file of the Registrar of Co-operative Societies, Chennai whereby the Registrar refused sanction for sale of vacant site and building of the erstwhile Ramanathapuram District Central Co-operative Bank at Madurai in favour of the petitioners.

3. Since the writ petition is connected with the issue to be decided in the writ appeal, both the matters are taken up together for disposal.

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4. The relevant facts for deciding the writ appeal and the writ petition are as follows:-

The erstwhile Ramanathapuram District Central Co-operative Bank Limited was functioning from their Head Quarters at Madurai upto 1.9.1993. On the trifurcation of the Ramanathapuram District into three separate Revenue Districts, the said bank was also trifurcated into three banks viz., (1) Ramanathapuram District Central Co-operative Bank Limited with head quarters at Ramanathapuram (2) Pasumpon Muthuramalinga Thevar District Central Co-operative Bank Limited with head quarters at Sivaganga (3) Kamarajar District Central Co-operative Bank Limited with head quarters at Virudhunagar. All the three banks started functioning in their respective headquarters with effect from 2.9.1993. The Head Office building of the erstwhile composite bank situated at Madurai became vacant and proposals were initiated to sell the building with vacant land. All the three Banks by resolution No.28 dated 18.9.1993 unanimously resolved to sell the building and the vacant land.

5. In accordance with the resolution dated 18.9.1993 steps were taken and the Government accorded their permission on 3.5.1994 to dispose the property. The Registrar of Co-operative Societies the second respondent herein also granted permission to dispose the property as per proceedings dated 17.5.1994. Subsequently second respondent constituted a joint Committee of all the three Central Co-operative Banks and the said Committee resolved to conduct tender cum public auction for disposal of the property. Though offer was given for a sum of Rs.1,53,00,000/- by one Sharravanan, the Government as per proceedings dated 20.12.1994 granted permission for the sale of the property only on payment of a sum of Rs.1,77,12,000/-. In view of the Government order, the bid amount was raised and permission for sale was granted by the second respondent on 27.1.1995.

6. The order dated 27.1.1995 of the second respondent accepting the bid for a sum of Rs.1,77,12,000/- was challenged in W.P.Nos.4735, 5092 and 6941 of 1995 by Mr.S.Marimuthu, Mr.R.K.Thandiappan and Mr.Subha Thangavelan respectively. Initially interim stay of all further proceedings pursuant to the acceptance of bid was granted in all the three writ petitions. As against the interim orders, writ appeals were preferred by the highest bidder in Writ Appeal Nos.939 to 941 of 1995. Those writ appeals along with writ appeal Nos.982 to 984 of 1995 preferred by the Joint Registrar-cum-Managing Director of the Pasompon Muthuramalinga Thevar District Central Co-operative Bank Limited were taken up for hearing and all the six writ appeals were disposed by the Division Bench and a common judgment was delivered on 21.11.1995. In the judgment dated 21.11.1995, the Division Bench directed fresh tender process and also gave specific direction as to how the matter should be

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proceeded with and the relevant directions as contained in para 30 of the judgment is reproduced below:-

> "(i) To conduct a public auction on a date to be specified and notified after due and sufficient publication of the proposed auction with particulars relating to the property to be sold and the upset price which shall be the value fixed viz., Rs.1,77,12,000/-.
>
> (ii) Simultaneously, publish a notification inviting sealed tenders also to be opened at the time of and immediately after the public auction only and accept as hereinafter provided the best of the two offers - made at the time of public auction and received in the form of sealed tenders, if considered to represent real market value of the property in question.
>
> (iii) The auction shall commence at the time, date and place specified in the notice of auction. No bid or tender below the upset price shall be entertained or considered. Immediately after the close of the bidding the Sale Officer shall record the maximum bid amount and thereafter the tenders, if any, received shall be taken and opened by the Sale officer. If the tender is found to be in order, it shall be taken as part of the sales records and the amount offered in the tender also shall be considered. If the amount quoted in the highest tender is higher than the maximum bid amount recorded in open auction, the sale officer shall continue the auction allowing the participation of only the highest bidder and the tenderers who have quoted the above of the highest bid. If there are no tenders or after continuing the auction between the highest bidder and the highest tenderer, the sale officer shall then provisionally accept the highest of the bid subject to the approval of the General Body of the three District Central Banks and the Registrar of Co-operative societies, Tamil Nadu state. On such approval only, the acceptances of the offer the bid made and provisionally accepted shall become final and operative and binding between parties

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iv) Immediately after conclusion of the auction as above, the authority shall cause the same to be placed before the General Body of the three District Central Banks, through their special officer's / Managing Directors/ Secretaries concerned within four weeks and there upon place the same, with the approval, if any, accorded to the Registrar who shall pass orders either way within four weeks from the date of receipt of the relevant papers by him.

v) If the approval has been accorded as above, thereafter, the sale can be effected, as required in law."

7. Subsequently tender-cum-public auction was conducted to sell the property and in the public auction ultimately one M.Janakiraman offered a sum of Rs.3,75,00,000/- and since he withdrew his offer before confirmation, the second appellant and seventeen others offered a sum of Rs.3,75,00,000/- and the offer was placed before the general body of three Central Co-operative Banks during the month of February, 1996. The general body of the three banks approved the tender and subsequently as per the direction contained in the judgment of the Division Bench, the same was forwarded to the Registrar of Co-operative Societies for his approval in terms of Rule 78(3) of the Tamil Nadu Co-operative Societies Rules, 1998. Since the second respondent has not passed orders within four weeks as per the direction contained in the judgment of the Division Bench, the appellants issued lawyer's notice dated 22.4.1996 to the second respondent and the said notice was duly replied stating that the Registrar has already passed an order on 26.2.1996. However as the bid has to be confirmed by the Government in terms of G.O.Ms.No.325 dated 15.4.1993, the matter was stated to have placed before the Government for appropriate orders.

8. Subsequently the third respondent passed an order in terms of Rule 78(3) on 5.6.1996 whereby the second appellant was informed that the Government had taken a decision not to dispose of the vacant site and building of the erstwhile Ramanathapuram District Central Co-operative Bank Limited situated at Madurai and decided to close the case. Along with the said proceedings, the earnest money deposit made by the first appellant was also returned. Challenging the said order, the first appellant has preferred W.P.No.6870 of 1996.

9. In the affidavit filed in support of W.P.No.6870 of 1996 the first appellant herein contended that in view of the judgment of the Division Bench dated 21.11.1995 in W.A.Nos.939 to 941 of 1995 the

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Registrar has no other option than to approve the proposal, as according to the appellants, the Registrar and the Government had already exercised their powers under Rule 78(3) of the Tamil Nadu Co-operative Societies Rules and as such by passing the impugned order the Registrar as well as the Government virtually flouted the judgment of the Division Bench. According to the appellants, the whole issue is covered by the decision in W.A.No.939 to 941 of 1995 and in view of the approval of the general body for the proposed sale coupled with the direction of the Division Bench, the second respondent and the Government had no role to play in the matter and as such the first appellant prayed for setting aside the impugned order and to direct the respondent to communicate the acceptance of the tender.

10. In the said writ petition respondents 1 and 3 filed counter affidavit and opposed the prayer. According to the first respondent, the Government after careful consideration of the matter, decided that there is no necessity to sell the vacant site and building of the erstwhile Ramanathapuram District Central Co-operative Bank at Madurai and passed an order in G.O.Ms.No.115 dated 30.5.1996, which is perfectly in order and does not call for interference. The third respondent in their counter contended that the Registrar of Co-operative Societies considered the proposal forwarded by the General Body of the Society and since the authority to approve the contract and tender above the value of Rs.1 crore is the Government, in turn, forwarded the same to the Government for approval, which ultimately culminated in rejecting the proposal by the Government. It is their further contention that till the bid is finally accepted no right would accrue to the appellants herein. It is also stated that along with the impugned order dated 5.6.1996, the earnest money was returned and the same was encashed without any demur and only as an after thought the writ petition has been preferred.

11. The learned Single Judge considered the entire aspect in the light of the earlier judgment of the Division Bench dated 21.11.1995 in W.A.No.931 to 941 of 1995 and quashed the impugned order dated 5.6.1996 on the file of the third respondent. However the learned Judge felt that the consequential relief of direction to the respondents for communicating the acceptance of the tender cannot be ordered, as according to the learned Judge it is for the second respondent to take a dcision either to grant sanction or to refuse the same. As such, the learned Single Judge directed the second respondent to consider the recommendation of the committee and the approval of the general body of the bank for sale of the building and vacant land in question, in the light of the observation made in the order and more particularly with reference to Rule 78(3) of the Tamil Nadu Co-operative Societies Rules and pass appropriate orders and communicate the same to the second

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petitioner/second appellant on or before 21.11.2003. It is the said order of the learned Single Judge which is challenged in the present writ appeal.

12. Thiru G. Rajagopal, learned Senior Counsel for the appellants contended that having found that the order of the third respondent dated 5.6.1996 issued in pursuance of the decision of the Government not to sell the building and vacant land as arbitrary and illegal, the learned Judge should have granted the further prayer, as according to the learned Senior Counsel, the whole matter is covered by the judgment of the Division Bench dated 21.11.1995 in W.A.Nos.939 to 941 of 2005. According to the learned Senior Counsel, the Government as well as the second respondent are bound by the judgment of the Division Bench and as such the learned counsel prayed for setting aside the order of the learned Single Judge and prayed for a direction for sale of the property to the appellants.

13. Per contra, Thiru Vijay Narayan, learned Senior Counsel appearing for the third respondent submitted that the decision of the Government as well as the Registrar is perfectly in order, inasmuch as in the judgment dated 21.11.1995 in W.A.Nos.939 to 941 of 1995, the Division Bench had given liberty to the Registrar to pass orders in either way and as such the Registrar and the Government in exercise of their powers took a decision not to sell the property. It is the further contention of the learned Senior Counsel that the value of the property has increased considerably and as such due to change in circumstance, it is not in public interest to order sale of the property in favour of the appellants.

14. We have heard the learned senior counsels appearing on either side at length and we have also perused the judgment of the Division Bench dated 21.11.1995 and the order impugned in the writ appeal. A perusal of the judgment of the Division Bench in W.A.No.939 to 941 of 1995 shows that the Division Bench had not directed the second respondent to exercise the power in a particular manner. The direction of the Division Bench is with regard to the approval of the auction by the second respondent as contained in Sl.No.4 of the direction, which is extracted in the earlier part. This clearly shows that the Division Bench permitted the second respondent to pass orders in either way in respect of the auction sale of the property and in case the Registrar gives approval, the sale could be effected. Therefore we do not subscribe to the interpretation of the judgment as given by the learned Senior Counsel for the appellants to the effect that on account of the earlier permission granted by the Registrar under Rule 78(3) of the Tamil Nadu Co-operative Societies Rules, further approval of the Registrar is unnecessary. While giving direction to the Registrar to pass orders in the matter of confirmation of auction in either

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way, the Division Bench was fully conscious of the earlier grant of approval under Rule 78(3) of the Tamil Nadu Co-operative Societies Rules by the second respondent. Therefore it can be safely concluded that even though there was an earlier approval by the Registrar, the Division Bench felt it necessary to have a fresh consideration in view of the the changed circumstances.

15. The next contention of the learned Senior Counsel for the appellant pertains to the so called order of the second respondent which is found mentioned in the communication dated 3.5.1996 addressed to the learned counsel for the appellants in reply to the contempt notice. The said letter is extracted below:-

"Rc.No.42335/93/CII dated 3.5.96

To
Thiru G.Baskaran, B.Sc., B.L.,
Advocate
Goronel Manor
No.9, Dr.Rangachari Rioad
Mylapore,
Madras 600 004

Sir,
Sub: Disposal of vacant site and building of the Composite Ramanathapuram District Central
Cooperative Bank situated at Madurai.

Ref: Your notice dated 22.4.96.

With reference to the above notice, I would like to say that I am the Registrar of Cooperative Societies. In accordance with the direction of the Hon'ble High Court in Writ Appeals No.939 of 1995 batch that immediately after conclusion of the auction, the authority shall cause the same to be placed before the General Body of the three District Central Cooperative Banks, through their Special Officers etc., concerned, and within 4 weeks thereupon, place the same, with the approval, if any, accorded to the Registrar who shall pass orders either way within 4 weeks from the date of receipt of the relevant papers.
The relevant papers were received by the Registrar of Cooperative Societies on 19.2.96 and in obedience to the direction of the Hon'ble High Court, the Registrar of Cooperative Societies has passed his final

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orders on 26.2.96. However, this matter does not relate to the permission under rule 78(3) of the Tamil Nadu Cooperative Societies Rules, 1988, but relates mainly to the confirmation of the sale. As per the Government's Order G.O.Ms.No.325, Cooperation, Food and Consumer Protection Department dated 15.4.93, all tenders and purchases the value of which exceeds Rs.1 crore should be sent to the Government for approval. Since the sale is attracted by the G.O.Ms.No.325 dated 15.4.93, the confirmation of the sale has to be given only by the Government. Besides the Hon'ble High Court in the above Writ Appeal, hence directed the respondents 1 to 3 to proceed in the matter afresh in the manner directed by the Hon'ble High Court and since the Government is the respondent No.1, it is necessary on the part of the Registrar of Cooperative Societies to remit the matter to the Government for their orders.

I would also like to say that Rule 78(3) relates to the permission for the disposal of any immovable property by the Society. In this case, the Government have already given permission to the Societies in May'94 to dispose of the above property in Public Auction and pursuance to this, the Registrar of Cooperative Societies in his proceedings Rc.No.216947/93/CBPI dated 17.5.94 had already issued a permission under Rule 78(3) permitting the Bank to dispose of the vacant site and building. The process of sale has been conducted in accordance with the direction of the Hon'ble High Court.

The issue to be decided in this case is only the confirmation of the sale. As mentioned above, as per the G.O., the Government is the competent Authority to confirm any tender above Rs.1 crore. Hence the matter has been referred to the Government as it is outside the competence of the Registrar of Cooperative Societies.

The Hon'ble High Court had directed the Registrar to pass orders within 4 weeks. The Registrar has already passed orders as

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directed by the High Court within 4 weeks and there is no further action due from the Registrar. The Registrar of Cooperative Societies have complied with the orders of the Hon'ble Court in all respects.

The only issue remaining is the confirmation of the sale by the Government which is the competent authority.

I hope the above reply would clarify the matter.

Yours faithfully,
Sd/-
(JOR SINGH SYIEM)"

16. The above referred letter of the Registrar cannot be construed to be a communication with regard to the disposal of the matter as required under Rule 78(3) of the Tamil Nadu Co-operative Societies Rules in either way as directed by the Division Bench. The circumstances which compelled the Registrar to send such a communication is also to be seen. When the contempt notice was issued by the learned counsel for the appellants, the Registrar appears to have sent a status report to the counsel informing him that the steps to be taken by the Registrar in the matter has already been taken and as such the Registrar has complied with the orders of the Honourable High Court in all respects. It is further stated in the said communication that the issue remaining is the confirmation of sale by the Government which is the competent authority. This communication though refers to the orders passed by the Registrar cannot be interpreted to mean that the Registrar has exercised his powers under Rule 78(3) of the Tamil Nadu Co-operative Societies Rules in a particular manner. The Registrar had only communicated that he has done his part and the matter is sent to the Government for taking appropriate decision. Therefore we are not inclined to accept the submission made by the learned Senior Counsel to the effect that there was an approval by the Registrar which was communicated to the appellants through their counsel as per letter dated 3.5.1996.

17. Since the learned Single Judge in Writ Petition No.6870 of 1996 had quashed the order dated 5.6.1996 and as the respondents have not challenged the said order in appeal, we are not called upon to decide the merits of the said part of the order. The issue in this writ appeal is only in respect of the consequential prayer for a positive order of sale in favour of the appellants.

18. The learned Senior Counsel relied on the judgment of the Apex Court reported in 2007(11) SCALE 49 (RELIANCE ENERGY LIMITED v. MAHARASHTRA S.R. DEV.CORPORATION) and contended that even in contractual matters judicial review is permissible in case the decision is arbitrary and unreasonable.

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19. The learned Senior Counsel appearing for the third respondent supported the finding of the learned Single Judge and contended that the third respondent cannot be compelled to part with their valuable property and the Court is only concerned with the decision making process and in that process the Court cannot substitute its decision how so ever erroneous it may be. In support of his contention he relied on the judgment of the Apex Court reported in 2007(1) S.C.C. 477 (RAJASTHAN HOUSING BOARD v. G.S.INVESTMENTS). In the said case the Supreme Court was concerned with sale of the plots belonging to Rajasthan Housing Board in pursuance of the auction notice dated 3.2.2002 for auction of 50 commercial plots followed by another auction notice dated 19.2.2002. The auction was conduced on 20.2.2002 in which the highest bid at the rate of 5750 per sq.ft. was accepted. Subsequently a news item was published in the newspaper that large scale bungling had been done in the auction due to which the price fetched for the plots in question was much below the market rate. The State Government taking note of the news item issued a direction whereby the records of the auction was summoned and the Government also stayed all further proceedings relating to the auction of the plots. Ultimately the State Government passed an order disapproving the auction and directing fresh auction. Accordingly, the Rajasthan Housing Board called upon the earlier auction purchaser to take back his earnest money deposit by producing the original receipt. The said communication was challenged by the auction purchaser before the High Court and ultimately the learned Single Judge disposed the writ petition directing the Housing Board to consider the matter and the said order was challenged by the Housing Board before the Division Bench and the Division Bench dismissed the appeal and aggrieved by the said order, the Rajasthan Housing Board filed appeal before the Supreme Court. The Apex Court found that as per Section 60 of the Rajasthan Housing Board Act, the Government has got powers to issue direction to the Board in case the Government found that its opinion is necessary or expedient to carry out the purpose of the Act and it shall be the duty of the Board to comply with such direction. The Supreme Court upheld the decision of the Government in cancelling the auction and observed that the direction relating to the issuance of the demand notice for the balance amount virtually amounts to confirmation of the auction in favour of the auction purchaser by the court, which was not the function of the court. In the said factual background the Apex Court considered the issue with regard to judicial review in the matter of cancellation of auction held by public body and held thus.

> "10. The other question which requires consideration is what are the contours of power which the High Court would exercise in a writ petition filed under Article 226 of the Constitution

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where the challenge is to cancellation of an auction held by a public body where the prime consideration is fairness and generation of public revenue. This question has been examined in a catena of decisions of this Court. In a recent decision rendered in Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. 6 where after consideration of several earlier decisions, the Bench to which one of us was a party, summarised the legal principle as under in paras 11 to 15 of the said Report: (SCC pp. 147-48)

> " 11 . The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and award of contract, have been considered in great detail by a three-Judge Bench in Tata Cellular v. Union of India 7 . It was observed that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down. (See para 85 of the Report, SCC para 70.)
>
> 12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

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The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing of decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. (See para 113 of the Report, SCC para 94.)

13 . In Sterling Computers Ltd. v. M&N Publications Ltd. 8 it was held as under: (SCC p. 458, paras 18-19)

> ' 18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the court is concerned primarily as to whether there has been any infirmity in the "decision-making process". ... By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Court have inherent limitations on the scope of any such enquiry. But at the same time ... the courts can certainly examine whether "decision-making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.
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> 19 . If the contract has been entered into without ignoring the procedure which can be said to be

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basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then court cannot act as an Appellate Authority by substituting its opinion in respect of selection made for entering into such contract.'

14. In Raunaq International Ltd. v. I.V.R. Construction Ltd. 9 it was observed that the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations, which would include, inter alia, the price at which the party is willing to work, whether the goods or services offered are of the requisite specifications and whether the person tendering is of the ability to deliver the goods or services as per specifications.

15. The law relating to award of contract by the State and public sector corporations was reviewed in Air India Ltd. v. Cochin International Airport Ltd. 10 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order

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to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere."

20. Matters pertaining to judicial review in administrative actions came up for consideration before the Supreme Court in the judgment reported in 2006(8) Scale 588 (GANESH BANK, KURUNDWAD v, U.O.I)wherein it was held as follows:-

"52. There should be judicial restraint while making judicial review in administrative matters. Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision-making authority exceeded its powers; (c) committed an error of law; (d) committed breach of the rules of natural justice; and (e) reached a decision which no reasonable tribunal would have reached; or (f) abused its powers. Administrative action is subject to control by judicial review in the following manner:

(i) Illegality .—This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

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55 . The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above: like illegality, irrationality and procedural impropriety. Whether the action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

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> 56. The famous case commonly known as ' Wednesbury case ' is treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory direction.
>
> 58. Therefore, to arrive at a decision on 'reasonableness' the court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view. "

21. The learned Judge is perfectly right in rejecting the prayer for communication of acceptance of the sale. The decision to sell the property was originally taken in the year 1994 and the Registrar granted permission as per order dated 17.5.1994. Due to passage of time, the value of the property had increased tremendously and therefore considering the factual situation prevailing during the relevant period, if a decision was taken to drop the proposal to sell the property, it cannot be said that such a decision is arbitrary. Till the auction is confirmed, no body gets any right. The bid submitted is only an offer and till it is confirmed, it continues to be an offer. The appellants participated in the auction knowing fully well the conditions of auction including the direction given by the Division Bench to the Registrar to take decision either way. Therefore we do not find any substance in the argument with regard to the rejection of the prayer to communicate the acceptance of the offer. As such we are not inclined to interfere with the order of the learned Single Judge.

22. In compliance of the order dated 30.10.2003 in W.P.No.6870 of 1996 the second respondent had passed the order in Rc.No.42335/93 ACS/93 dated 14.11.2003 which is challenged by the appellants in W.P.No.39213 of 2003. In the Memorandum of Grounds of the said writ petition, the appellants herein attacked the order on similar reasons as found in W.P.No.6870 of 1996. It is contended that the

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order is bad in law and factually incorrect inasmuch as the bid was given in 1994, and the same cannot be set at naught relying on the guideline value for the year, 2003.

23. In the counter filed by the third respondent it is contended that in the changed situation, the third respondent is not interested to proceed with the auction and sell the property at all. The other respondents have also filed their counter and opposed the prayer.

24. The learned Senior counsel for the writ petitioners submitted that the second respondent erred in passing the impugned order on the basis of the guideline value for the year, 2003 and according to the learned counsel the right of the parties crystalized as early as in 1993 when the auction was conducted originally and as such on the basis of the guideline value for the year 2003, the Government cannot deny approval for the sale. By way of alternative submission the learned Senior Counsel submitted that the petitioners are prepared to purchase the property for the present guideline value, which according to him is an amount of Rs.2,000/- per sq.ft.

25. However the learned Senior Counsel for the third respondent reiterated that they are not prepared to sell the property presently and according to the learned Senior Counsel, the present value of the property would run into several crores. It is further contended by the learned Senior Counsel that this Court in a proceeding under Article 226 of the Constitution of India cannot compel the parties to sell the property. It is also contended that the property is situated at Madurai Town and if it is sold in public auction it will fetch several crores, which would be several times more than the amount offered by the petitioners and as such the auction sale which is the subject matter of this writ petition is not in the interest of the bank and he prayed for dismissal of the writ petition.

26. A perusal of the order impugned in this writ petition shows that the second respondent had considered the rise in prices for the immovable property and having found that the proposed sale is not in the interest of the Bank, declined to grant permission. The said order cannot be termed to be arbitrary or irrational. It cannot be said that the Registrar had taken irrelevant materials into consideration or he was actuated by malafides in passing the impugned order. While passing the impugned order, the Registrar took into consideration all the relevant materials including the interest of the third respondent and a decision was arrived at accordingly in public interest. The said decision cannot be said to be unreasonable. While exercising the power of judicial review, this court cannot act like an appellate authority. The writ jurisdiction is not an appellate jurisdiction. Similarly while exercising

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judicial review the court is not concerned with the decision. The court is concerned only with the decision making process. As such whether to sell the property or not is a question to be decided by the authorities keeping in view the best interest of the concerned bank. It is not for this court to substitute its opinion in such matters. It is trite law that when there is a conflict between public interest and private interest the public interest alone would prevail.

27. When the second respondent found that the amount offered in the year 1994 was much less when compared to the guideline value for the year 2003 and as such it is not in the interest of the bank to sell the property in 2003 for the value of 1994, it cannot be said that the said decision is erroneous and amenable for correction by this court in an equity jurisdiction under Article 226 of the Constitution of India. In view of the power conferred on the second respondent under Rule 78(3) of the Tamil Nadu Co-operative Societies Rules it cannot be said that the second respondent had no jurisdiction to pass the impugned order. Similarly in view of he consideration of the supervening public interest the order cannot be said to be unreasonable. In any sale, the paramount consideration is to get the best price.

28. In the judgment reported in 2005(3) Scale 414 (KARNATAKA STATE INDUSTRIAL INVESTMENT & DEVELOPMENT CORPORATION LIMITED v. M/s CAVALET INDIA LIMITED) the Apex Court summarised the principles culled out from various decisions pertaining to judicial review in administrative matters as follows:-

> 19. From the aforesaid, the legal principles that emerge are:
>
> (i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.
>
> (ii) In a matter between the Corporation and its debtor, a writ court has no say except in two situations:
>
> (a) there is a statutory violation on the part of the Corporation, or
>
> (b) where the Corporation acts unfairly i.e. unreasonably.

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(iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the Financial Corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Financial Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adopted.

(vii) The Financial Corporation is always expected to try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the Financial Corporations cannot be carried to

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the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the Financial Corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price."

29. In the judgment reported in 2006(2) Scale 12 (GOVERNMENT OF ANDHRA PRADESH AND OTHERS v. NARSULLAH KHAN) the Apex Court held thus:-

"By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority."

30.The learned Senior Counsel for the appellants relied on the judgment of the Apex Court in the judgment reported in 2007(11) SCALE 49 (RELIANCE ENERGY LTD. v. MAHARASHTRA S.R. DEV CORPORATION) in support of his plea that judicial review is permissible even in contractual matters. In the very same decision, the Apex Court considered the question as to what extent the judicial review is permissible in contractual matters and observed thus:-

"23. In the case of Union of India and another vs. International Trading Co. and another – 2003 (5) SCC 437, the Division Bench of this Court speaking through Pasayar, J had held:

"14. It is trite law that Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

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15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the state, and non-arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable in the panorama of judicial review only to the extent that the State must act validly for a discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it equally satisfy the test of reasonableness."

24. When tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks. This "legal certainty" is an important aspect of the rule of law. If there is vagueness or subjectivity in the said norms it may result unequal and discriminatory treatment. It may violate doctrine of "level playing field".

25. In the case of Reliance Airport Developers (P) Ltd. v. Airports

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Authority of India and others - (2006) 10 S.C.C.1, the Division Bench of this court has held that in matters of judicial review the basic test is to see whether there is any infirmity in the decision-making process and not in the decision itself. This means that the decision maker must understand correctly the law that rgulates his decision-making power and he must give effect to it otherwise it may result in illegality. The principle of "judicial review" cannot be denied even in contractual matters or matters in which the Government exercises its contractual powers, but judicial review is intended to prevent arbitrariness and it must be exercised in larger public interest. Expression of different views and opinions in exercise of contractual powers may be there, however such difference of opinion must be based on specified norms. Those norms may be legal norms or accounting norms. As long as the norms are clear and properly understood by the decision maker and the bidders and other stakeholders, uncertainty and thereby breach of rule of law will not arise. The grounds upon which administrative action is subjected to control by judicial review are classifiable broadly under three heads, namely, illegality, irrationality and procedural impropriety. In the said judgment it has been held that all errors of law are jurisdictional errors. One of the important principles laid down in the aforesaid judgment is that whenever a norm/benchmark is prescribed in the tender process in order to provide certainty that norm/standard should be clear. As stated above "certainty" is an important aspect of rule of law. In the case of Reliance Airport Developers (supra), the scoring system formed part of the evaluation process. The object of that system was to provide

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identification of factors, allocation of marks of each of the said factors and giving of marks had different stages. Objectivity was thus provided."

31. In the judgment reported in 2002(3) S.C.C.496 (HARIYANA FINANCIAL CORPORATION v. JAGADAMBA OIL MILLS) the Supreme Court held as follows:-

"10. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A.K. Kraipak v. Union of India 3 . Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an Appellate Authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action on which there is room for reasonable people to hold differing opinions as to which is to be preferred" (as per Lord Diplock in Secy. of State for Education and Science v. Metropolitan Borough Council of Tameside 4 , All ER at p. 695 f). The court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the

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> administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the court intervene. To quote the classic passage from the judgment of Lord Greene, M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. 5 : (All ER pp. 682H-683A)
>
> "It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."

32. The offer given by the appellants to purchase the property cannot be accepted in the changed situation, in view of the rise in property value. In case the property is to be sold and a decision to that effect is taken by the third respondent it can be done only by way of public auction so as to fetch the maximum value for the property. There cannot be any private sale in respect of public property. Therefore we are not inclined to accept the alternative submission of the learned Senior Counsel for the appellants to sell the property to the appellants on payment of the present guideline value.

33. In the decision reported in AGGARWAL & MODI ENTERPRISES v. N.D.M.C. (2007(10) Scale 549 the Supreme Court emphasised the need for public auction while disposing the public property and observed thus:-

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"Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public property in contradiction to the disposal of private property i.e it should be for public purpose ad in public interest. Invitation for participation in public auction ensures transparency and it would be free from bias or discrimination and beyond reproach."

34. Therefore we do not find any substance in both the writ appeal as well as writ petition. Accordingly both the writ appeal as well as writ petition are dismissed. In the facts and circumstances of the case, there will be no order as to costs. Consequently, connected WPMP.47457/2003 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Tr/

To

1. The Secretary to Government
   State of Tamil Nadu
   Food and Consumer Protection Department
   Chennai-600 009.

2. The Registrar of Co-operative Societies
   Chennai-600 010.

3. The Joint Registrar/President-cum-
   Managing Director and Convenor
   P.M.T. District Central Co-operative
   Bank Limited, Sivagangai.

1 cc to Mr.P. Srinivas, Advocate, Sr. 75683
2 ccs to Government Pleader, Sr. 75435, 75436

W.A.NO.135 OF 2004

and

W.P.9213/03

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